

COTTONWOOD HEIGHTS

RESOLUTION NO. 2009-32

A RESOLUTION APPROVING ENTRY INTO AN INDEPENDENT CONTRACTOR AGREEMENT WITH LYNN J. FEVEYER, JR. FOR GRANT COORDINATION SERVICES (2009-2010 FISCAL YEAR)

WHEREAS, the city council (the "*Council*") of the city of Cottonwood Heights (the "*City*") met in regular session on 9 June 2009 to consider, among other things, approving an independent contractor agreement (the "*Agreement*") with Lynn Feveryear, Jr. ("*Mr. Feveryear*") whereunder Mr. Feveryear would act as the City's grant coordinator and perform other related services to the City during the City's 2009-10 fiscal year; and

WHEREAS, the Council has reviewed the form of the Agreement, a photocopy of which is annexed hereto; and

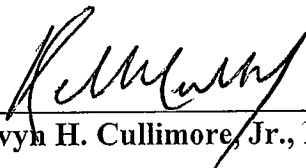
WHEREAS, after careful consideration, the Council has determined that it is in the best interests of the health, safety and welfare of the citizens of the City to approve the City's entry into the Agreement as proposed;

NOW, THEREFORE, BE IT RESOLVED by the Cottonwood Heights city council that the attached Agreement is hereby approved, and that the City's mayor and recorder are authorized and directed to execute and deliver the Agreement on behalf of the City.

This Resolution, assigned no. 2009-32, shall take effect immediately upon passage.

PASSED AND APPROVED effective 9 June 2009.

COTTONWOOD HEIGHTS CITY COUNCIL

By 
Kelvyn H. Cullimore, Jr., Mayor




Linda W. Dunlavy, Recorder

VOTING:

Kelvyn H. Cullimore, Jr.	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>
Gordon M. Thomas	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>
J. Scott Bracken	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>
Don J. Antczak	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>
Bruce T. Jones	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>

DEPOSITED in the office of the City Recorder this 9th day of June 2009.

RECORDED this ___ day of June 2009.

WST\CH\524193.1

Independent Contractor Agreement

THIS INDEPENDENT CONTRACTOR AGREEMENT (this "*Agreement*") is made effective 1 July 2009 by **COTTONWOOD HEIGHTS**, a municipality of the state of Utah whose address is 1265 Fort Union Blvd., Suite 250, Cottonwood Heights, UT 84047 ("*City*"), and **LYNN J. FEVERYEAR, JR.**, an individual whose address is 3494 Macintosh Lane, Cottonwood Heights, UT 84121 ("*Contractor*").

R E C I T A L S:

- A. Contractor has significant expertise and experience in seeking and administering grants and other outside sources of funding for governmental entities.
- B. City desires to retain Contractor on an independent contractor basis to act as City's grant coordinator and to perform other related functions for City on the terms and conditions specified in this Agreement.
- C. Contractor desires to be so retained by City as an independent contractor.
- D. The parties have determined that it is mutually advantageous to enter into this Agreement.

A G R E E M E N T:

NOW, THEREFORE, in consideration of the premises, the mutual covenants and conditions hereinafter set forth, and for other good and valuable consideration, the receipt and legal sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **Engagement.** City hereby engages Contractor, and Contractor hereby accepts such engagement, to perform the Services (as hereinafter defined).

2. **Services, Independent Activities.**

(a) **Services.** Contractor is engaged to coordinate grants for City, performing the following functions (collectively, the "*Services*"): (i) extensively researching and seeking outside sources of funding for the City, primarily from other governmental agencies (including federal, state and county sources), but also from private sources where appropriate, focusing on obtaining funding to supplement City's budget; (ii) reviewing the requirements of outside grant and funding programs and recommending to City such legal, procedural and/or operational modifications as may be necessary or advisable to implement such programs for City and, following adoption, assisting City to implement such programs; (iii) working with City staff in a collaborative fashion on application development and obtaining approval from City's decision makers; (iv) reviewing grant applications to ensure that any future commitments fit into City's future plans and programs; (v) assisting City to properly and timely complete all necessary reporting for outside funding programs to assure achievement of program goals and compliance with program requirements; (vi) assisting City's decision makers to formulate and amend planning and policies for City concerning grants and other outside funding sources; (vii) regularly attending City staff meetings; (viii) reporting at city council

meetings as directed by the City manager (the "*Manager*"), including an annual report of the number of outside funding applications filed, the total dollar amount awarded to City, and any future obligations of City concerning such awards; and (ix) such other services as the Manager or the city council reasonably may request from time to time. Contractor shall be actively involved in personally performing the Services, devoting Contractor's time, attention and best efforts to City's affairs. Contractor shall not, however, expend more than 20 hours per week performing the Services without Manager's prior written consent.

(b) *Independent Activities*. As an independent contractor, Contractor shall be freely entitled to expend time (while not on duty for City) for personal or outside business, charitable or professional activities. Such outside activities shall not be deemed a breach of this Agreement, provided that they do not materially interfere with the Services to be rendered to City hereunder. Contractor shall not, without City's express prior written consent (which consent shall not be unreasonably withheld), engage in any activity competitive with or adverse to City's interests, whether alone, as a partner, or as an officer, director, employee, shareholder, member or owner of any other entity, or as a trustee, fiduciary, or other representative of any other activity.

3. **Term**. Subject to the provisions regarding termination set forth in section 8 below, Contractor's term of engagement shall commence on 1 July 2009 and shall terminate on 30 June 2010. Thereafter, the term of this Agreement may be extended for subsequent (July 1st - June 30th) fiscal years of the City upon the written consent of both City and Contractor.

4. **Standards**. Contractor shall perform Contractor's duties under this Agreement in accordance with (a) all legal requirements; (b) all applicable professional standards and practices; and (c) such other standards as may, from time to time, be applicable during the term of this Agreement.

5. **Compensation**. City shall pay Contractor \$20 per hour for each hour that Contractor performs the Services. Contractor shall keep contemporaneous written records (with detailed description of service performed and time expended in one-quarter hour increments) of the Services performed, and shall bill City monthly for Services performed in the immediately preceding calendar month. Contractor also shall be entitled to reimbursement of any actual, out-of-pocket costs necessarily advanced by Contractor in his performance of the Services in accordance with City's reimbursement policies.

6. **Status**. In performing the Services, Contractor shall at all times be an independent contractor, and not an employee, of City. As an independent contractor, Contractor shall not be entitled to any benefits or perquisites offered by City to its employees, such as insurance coverage, paid vacation, retirement plan funding, or any other items. Instead, Contractor's sole compensation for performance of the Services shall be the compensation and costs reimbursement described in section 5 above.

7. **Termination**. This Agreement shall be terminated upon the happening of any of the following events:

(a) For Cause. For cause upon ten days' prior written notice and opportunity to cure by the terminating party where the other party has materially breached any provision of this Agreement or violated any statutory or common law duty or obligation to the terminating party, including, without limitation, Contractor's failure to perform any of Contractor's obligations hereunder to City's reasonable satisfaction at any time;

(b) Without Cause. Without cause at any time upon at least 90 days' prior written notice by a party to the other;

(c) Mutual Consent. Whenever City and Contractor mutually agree in writing to terminate this Agreement;

(d) Expiration of Term. Expiration of the term of this Agreement without the parties' mutual written agreement to extend such term for a subsequent fiscal year;

(e) Death. Upon Contractor's death; or

(f) Conduct. If Contractor engages in any fraudulent or dishonest conduct of any type whatsoever, or if City reasonably determines (in view of prevailing community standards in Cottonwood Heights, Utah) that Contractor has engaged in personal conduct which would injure the reputation of City or otherwise adversely affect City's interests if Contractor were retained as an independent contractor of City.

8. **Rules, Regulations and Policies**. Contractor shall observe and comply with the rules and regulations of City as adopted by City respecting performance of the Services, and shall carry out and to perform orders, directions and policies announced to Contractor by City from time to time, either orally or in writing.

9. **Nondisclosure of Confidential Information**. Contractor acknowledges that, as a result of his engagement by City, Contractor may be provided access to, and otherwise may have the opportunity to acquire and use, confidential information of a special and unique nature and value relating to City's affairs that is not known to the general public. Such information made known to or learned by Contractor as a result of Contractor's engagement hereunder shall be referred to herein as the "*Confidential Information*."

As a material inducement to City to engage Contractor pursuant to this Agreement, Contractor covenants and agrees that Contractor shall not, at any time during or following the term of this Agreement, directly or indirectly divulge or disclose to any third party, for any purpose whatsoever, any of the Confidential Information which has been obtained by or disclosed to Contractor as a result of his engagement by City.

In the event of a breach or threatened breach by Contractor of any of the provisions of this section 10, City, in addition to and not in limitation of any other rights, remedies or damages available to City at law or in equity, shall be entitled to injunctive relief restraining and permanently prohibiting

any such breach by Contractor or any other person or entity directly or indirectly acting for or with Contractor.

Upon termination of this Agreement, Contractor shall not be entitled to keep or preserve records, files, documents and information of any type which are particular to City. Any and all records, files, documents and information of all types prepared in connection with Contractor's engagement hereunder are and shall remain City's property, notwithstanding that such items may have been prepared, transcribed or generated by Contractor.

10. **Telephone/Data Device.** To assure and facilitate more complete voice and e-mail communication between City and Contractor, City shall provide to Contractor a Sprint "Motorola Q" telephone/data device, Blackberry or similar, on the same terms and conditions as to City's other key appointed officers and employees, subject to Contractor's obligation to reimburse City for any personal usage of such device in accordance with any reimbursement policy adopted from time to time by City.

11. **General Provisions.** The following provisions are also an integral part of this Agreement:

(a) **Binding Agreement.** This Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the respective parties hereto.

(b) **Captions.** The headings used in this Agreement are inserted for reference purposes only and shall not be deemed to define, limit, extend, describe, or affect in any way the meaning, scope or interpretation of any of the terms or provisions of this Agreement or the intent hereof.

(c) **Counterparts.** This Agreement may be signed in any number of counterparts with the same effect as if the signatures upon any counterpart were upon the same instrument. All signed counterparts shall be deemed to be one original.

(d) **Severability.** The provisions of this Agreement are severable, and should any provision hereof be void, voidable, unenforceable or invalid, such void, voidable, unenforceable or invalid provision shall not affect the other provisions of this Agreement.

(e) **Waiver of Breach.** Any waiver by either party of any breach of any kind or character whatsoever by the other, whether such be direct or implied, shall not be construed as a continuing waiver of or consent to any subsequent breach of this Agreement.

(f) **Cumulative Remedies.** The rights and remedies of the parties hereto shall be construed cumulatively, and none of such rights and remedies shall be exclusive of, or in lieu or limitation of any other right, remedy or priority allowed by law.

(g) **Amendment.** This Agreement may not be modified except by an instrument in writing signed by the parties hereto.

(h) Time of Essence. Time is the essence of this Agreement.

(i) Interpretation. This Agreement shall be interpreted, construed and enforced according to the substantive laws of the state of Utah.

(j) Attorneys' Fees. In the event any action or proceeding is brought by either party to enforce the provisions of this Agreement, the prevailing party shall be entitled to recover its costs and reasonable attorneys' fees, whether such sums are expended with or without suit, at trial, on appeal or in any bankruptcy or insolvency proceeding.

(k) Notice. Any notice or other communication required or permitted to be given hereunder shall be deemed to have been received (a) upon personal delivery or actual receipt thereof or (b) within two (2) days after such notice is deposited in the United States mail, postage prepaid and certified and addressed to the parties at their respective addresses set forth above or to such other address(es) as a party may specify to the other in writing at any time during the term of this Agreement.

(l) Assignment. Contractor may not assign his rights or delegate his duties hereunder to any third party without City's prior written consent, which City may withhold in its sole, unfettered, discretion.

DATED effective the date first above written.

CITY:

ATTEST:

COTTONWOOD HEIGHTS, a Utah municipality

Linda Dunlavy, Recorder

By: _____
Kelvyn H. Cullimore, Jr., Mayor

CONTRACTOR:

Lynn J. Feveryear, Jr.